

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

July 05, 1995

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 94-0271

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

ALICE H. KOCINSKI,

Plaintiff-Appellant,

v.

**ATTORNEY STEPHEN E. KRAVIT,
KRAVIT, GASS & WEBER, S.C.,
AND ALL INSURERS, ET AL.,**

Defendants-Respondents.

APPEAL from an order of the circuit court for Milwaukee County:
MICHAEL J. SKWIERAWSKI, Judge. *Affirmed.*

Before Sullivan, Fine and LaRocque, JJ.

PER CURIAM. Alice H. Kocinski, *pro se*, appeals from an order dismissing her *pro se* complaint against Attorney Stephen E. Kravit and the law firm of Kravit, Gass & Weber, S.C. (collectively, Kravit), for failure to state a claim upon which relief could be granted and failure to file the complaint within the applicable statutory period of limitations. Kocinski's *pro se* complaint

alleged that Kravit provided “inadequate representation” and “participat[ed in] illegalities” with another law firm, the City of Milwaukee, and the defendant's attorneys—all in a “fraudulent attempt to deprive [her] of her just due for compensable damages” resulting from a 1982 boat accident. We only address one issue presented for our review—whether her complaint states a valid claim for legal malpractice.¹ We conclude that Kocinski's complaint does not allege how Kravit's alleged actions caused her to suffer any monetary damages or any injury. Therefore, Kocinski has failed to state a claim upon which relief can be granted; and we affirm the order of the trial court.

Kocinski filed her legal malpractice complaint against Kravit, seeking \$103,000,000 in compensatory and punitive damages and \$2,000 in past legal fees. Kocinski retained Kravit in April 1987 because her previous counsel withdrew from representing her in a personal injury suit resulting from a 1982 boating accident. Her previous counsel obtained a \$260,000 settlement with the City of Milwaukee for her injuries, but Kocinski refused to consent to the settlement agreement and her counsel withdrew from the case. Kocinski then retained Kravit to challenge the enforceability of the settlement agreement, but the trial court upheld the agreement. Kravit then withdrew from representing Kocinski after she rejected Kravit's advice not to appeal the trial court order. Kocinski filed a *pro se* appeal to both the court of appeals, which affirmed the trial court, see *Kocinski v. Home Ins. Co.*, 147 Wis.2d 728, 433 N.W.2d 654 (Ct. App. 1988), and then to the supreme court, which modified the court of appeals decision and remanded the case to the trial court. See *Kocinski v. Home Ins. Co.*, 154 Wis.2d 56, 452 N.W.2d 360 (1990). She then instituted the separate cause of action against Kravit that is at issue in the present case.

“Whether a claim for relief exists is a question of law which this court reviews independently, without deference to the circuit court.” *Paskiet v. Quality State Oil Co.*, 164 Wis.2d 800, 805, 476 N.W.2d 871, 873 (1991). The alleged facts stated in the complaint must be accepted as true. *Id.* “[T]he complaint must be liberally construed to do substantial justice and, if reasonably possible, construed to state a cause of action.” *Id.* (citation omitted). If after reviewing the allegations

¹ Kravit's brief raises several other potential bases on which the trial court dismissed Kocinski's complaint: (1) claim was barred by the statute of limitations; (2) common law principles do not support ignoring the statute of limitations; and (3) malpractice action accrued prior to August 24, 1987. We do not address these issues. See *Gross v. Hoffman*, 227 Wis. 296, 300, 277 N.W. 663, 665 (1938) (only dispositive issue need be addressed).

contained in the complaint, it appears certain that no relief can be granted to the plaintiff, then we will affirm an order dismissing a complaint for failure to state a claim. *Peterman v. Midwestern Nat'l Ins. Co.*, 177 Wis.2d 682, 697, 503 N.W.2d 312, 318 (Ct. App. 1993).

“A legal malpractice plaintiff must establish (1) the existence of an attorney-client relationship, (2) the acts or omissions constituting the alleged negligence, (3) cause and (4) injury.” *Estate of Campbell v. Chaney*, 169 Wis.2d 399, 405, 485 N.W.2d 421, 423 (Ct. App. 1992). Even if we liberally construe Kocinski's complaint, it fails to allege how Kravit caused her to incur any damages. See *Paskiet*, 164 Wis.2d at 805, 476 N.W.2d at 873. Further, she neither mentions any legal argument nor refers to any legal authority to establish how Kravit allegedly caused her to suffer any injury. Kocinski alleges in her complaint that she has suffered “[h]umiliation, anguish, degradation, pain, intense grief, insults, [and] suffering.” These, however, are emotional distress-type damages usually secondary to personal injuries. Emotional distress is insufficient to allege a basis for relief in this case. See *Acharya v. Carroll*, 152 Wis.2d 330, 337, 448 N.W.2d 275, 279 (Ct. App. 1989).

Accordingly, because Kocinski failed to properly establish two of the four requirements of a legal malpractice action—cause and injury—the complaint fails to state a valid claim for relief. *Id.* at 339, 448 N.W.2d at 280. Kocinski also states in her complaint that she is suing for punitive damages. “There must be a showing of some actual injury *which would justify an award of actual or compensatory damages* before punitive damages may be awarded.” *Tucker v. Marcus*, 142 Wis.2d 425, 440, 418 N.W.2d 818, 823 (1988) (citations omitted; emphasis in original). Therefore, because Kocinski's complaint does not justify an award of actual or compensatory damages, she also has no basis to seek punitive damages against Kravit.

The trial court properly dismissed Kocinski's legal malpractice claim; hence, we affirm.

By the Court.—Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.